



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 16, 1992

Honorable David Brabham  
Criminal District Attorney  
Gregg County  
101 East Methvin Street, Suite 333  
Longview, Texas 75601

Letter Opinion No. LO-92-005

Re: Whether a member of the board  
of trustees of an independent school  
district may serve on a city council or  
other boards (RQ-248)

Dear Mr. Brabham:

You ask whether a trustee of a junior college district established in accordance with section 130.082 of the Education Code may simultaneously serve as a member of the governing body of certain other political subdivisions. Your question raises no issue under article XVI, section 40 of the Texas Constitution, which prohibits one person from holding two civil offices of emolument, since section 130.082(d) of the Education Code provides that members of the board of trustees shall not receive emoluments of office. It does raise questions concerning the common-law doctrine of incompatibility, which prohibits one person from holding two offices if one office might impose its policies on the other or subject it to control in some other way. Attorney General Opinion JM-129 (1984); see *Thomas v. Abernathy County Line Indep. School Dist.* 290 S.W. 152 (Tex. Comm'n App. 1927, judgm't. adopted); *State ex rel. Brennan v. Martin*, 51 S.W.2d 815 (Tex. Civ. App. - San Antonio 1932, no writ).

Your first question is as follows:

May a trustee on the board of trustees of an independent  
school district junior college<sup>1</sup> district simultaneously serve as a

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<sup>1</sup> An independent school district junior college is established pursuant to section 130.011 of the Education Code by an independent school district or a city that has assumed control of its schools. See Educ. Code §§ 130.012 - .018. Although the Kilgore district was established according to section 130.011 of the Education Code, control of the junior college district has been removed from the independent school district board and vested in a separate board of trustees appointed pursuant to

councilperson on the governing body of a home rule municipality that is within the junior college district and is the municipality in which the junior college campus is located?

This question is governed by *Thomas v. Abernathy County Line Independent School District*. In that case the court wrote,

In our opinion the offices of school trustee and alderman are incompatible; for under our system there are in the city council or board of aldermen various directory or supervisory powers exercisable in respect to school property located within the city or town and in respect to the duties of school trustee performable within its limits--e.g., there might well arise a conflict of discretion or duty in respect to health, quarantine, sanitary, and fire prevention regulations.

290 S.W. at 153.

Similarly, members of the governing body of a home rule city would have the authority to exercise certain powers in regard to junior college district property located within the city. See Tex. Const. art. XI, § 5 (powers of a home rule city); Attorney General Opinion M-182 (1968) (city may impose building restrictions on a junior college district). Therefore, the common-law doctrine of incompatibility prevents a city council member from serving on the board of trustees of a junior college district when the campus of the junior college lies within the boundaries of the city.

Your second question is:

May a trustee on the board of trustees of an independent school district junior college district simultaneously serve as a councilperson on the governing body of a general law municipality that is within the junior college district but is not the municipality in which the junior college campus is located?

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(footnote continued)

section 130.016 of the code. The board of trustees, consisting of nine members, is governed according to the provisions of section 130.082 of the Education Code.

Your brief states that the junior college operates a "farm" on property located in part within the boundaries of two general law cities. Your question as to service on the governing body of either of these cities is controlled by *Thomas v. Abernathy County Line Independent School District*, *supra*. See Local Gov't Code § 342.001 - .005 (fire protection authority of type A general law city). Thus, service on the governing body of either of these cities is incompatible with service on the board of trustees of the junior college district.

Attorney General Opinion JM-129, indicates that service as a trustee of the junior college district would also be incompatible with serving on the governing body of *any* city within the boundaries of the junior college district. Attorney General Opinion JM-129 pointed out section 130.121 of the Education Code as a provision creating incompatibility between the governing board of the junior college and the county commissioners court. This statute provides that the governing board of a junior college may have "the taxable property in its district assessed and/or its taxes collected, in whole or in part, by the tax assessors and/or tax collectors, respectively, of any county, city, taxing district, or other governmental subdivision in which all or any part of the junior college district is located." Educ. Code § 130.21(b). It allows the governing body of the junior college district to require a city agent to allocate some time to the district's needs, whether or not this is acceptable to the city council. Letter Opinion No. 90-52 (1990) of this office determined on the basis of this statute that incompatibility prohibited a member of the board of trustees of a junior college district from serving on the governing board of a city within the district, even if no junior college district property were located within the city.<sup>2</sup>

Your third question is as follows:

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<sup>2</sup>Attorney General Opinion JM-129 and Letter Opinion No. 90-52 answer your question as to a general law city in which no property of the junior college is located, unless the city does not employ its own tax assessor-collector. In the latter case, there will be incompatibility of offices between a trustee of the junior college district and a city councilman of a general law city located within the district if the statutory duties of each give rise to the conflicting loyalties discussed in *Thomas v. Abernathy County Line Independent School District*. Although this is a question of law, it can be difficult to resolve solely by studying the statutory authority of each office, without additional information about the consequences for the other office for exercising statutory powers.

May a trustee on the board of trustees of an independent school district junior college district simultaneously serve as a trustee on the board of trustees of an independent school district located within the junior college district.

Incompatibility between offices arises when their duties are inconsistent or in conflict, or when one is accountable or subordinate to the other. 51 S.W.2d at 817. We have not found any powers or duties of the junior college district trustees or the independent school district trustees that would cause a person who is a member of both boards to choose the interests of one over the other. You have not suggested any grounds for believing that these two offices are incompatible, and we have not found any upon reviewing the relevant statutes. Although we would ordinarily consider the effect of tax statutes, school districts are presently subject to a statute that places taxing authority in county education districts. Educ. Code ch. 16; see *Carrollton-Farmers Branch Indep. School Dist. v. Edgewood Indep. School Dist.*, 35 Tex. Sup. Ct. J. 374 (Jan. 30, 1992). Accordingly, at present, we do not find any incompatibility between the two offices. Future legislation changing the duties of either office could create an incompatibility that does not now exist.

### **SUMMARY**

The common-law doctrine of incompatibility bars one person from simultaneously serving on the board of trustees of a junior college district and the governing body of a home rule city in which the junior college campus is located, or of a general law city in which property owned and operated by the junior college is located.

On the basis of Attorney General Opinion JM-129 (1984) service as a trustee of the junior college district would be incompatible with service on the governing body of any city within the boundaries of the junior college district.

We do not find any statutes that create incompatibility between the offices of trustee of a junior college district and trustee of a school district within the boundaries of the junior college district. Although we would generally look at the effect

of the taxing authority of a school district in connection with this question, that authority is presently vested in county education districts. However, future legislation changing the duties of either office could create an incompatibility.

Yours very truly,

**Susan Garrison**  
Assistant Attorney General

SG/lb

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